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IN THE

Supreme Court of the United States

OCTOBER TERM 1941

No. 131

UNITED STATES OF AMERICA,
Petitioner,

against

LOCAL 807, etc., et al.,
Respondents.

BRIEF FOR RESPONDENTS OTHER THAN LOCAL 807 AND MICHAEL CAHILL

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Local 807 and Michael Cahill.

JAMES D. C. MURRAY
and
EDWARD C. MAGUIRE
on the Brief.

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Statement

Respondent, a labor union, and some of its officers and members, were convicted in the United States District Court for the Southern District of New York for the crimes of violating the Anti-Racketeering Act and the Sherman Act. The Circuit Court of Appeals for the Second Circuit reversed the judgments of conviction under both indictments, but failed to dismiss the indictments. The reversal of the conviction under the Sherman Act was unanimous. The reversal under the Anti-Racketeering Act was by a divided Court, A. N. Hand, J., dissenting. Each of the judges wrote a separate opinion. These opinions are reported in 118 Fed. (2nd) 684.

The indictments under which the respondents were convicted were found by the same Grand Jury on the same day on the same evidence and, except for some slight variations which were necessitated by the language of the statutes involved, are precisely the same.

The Anti-Trust indictment is in one count and is drawn under Section 1 of the Sherman Act. The Anti-Racketeering indictment is in four counts and, with the exception of the formal parts, the language of each count is identical. The second, third and fourth counts contain no statement of facts except by reference to the first count.

The indictments were returned on the 31st day of May, 1938, and both were demurred to by all the respondents, separate demurrers being filed to the two indictments. Argument on the demurrers was heard by Judge Leibell of the District Court who overruled the same. The respondents then made separate motions for bills of particulars under both indictments. These motions were denied by Judge Knox.

In addition to Local 807, 76 individuals were named in the indictments, which were drawn against the same defendants. Of these individuals, seven were officers of the respondent union, six had no affiliation with the union, and the rest were members thereof. Those who had no affiliation with the union were eliminated in some way or another in the course of the proceeding and they are not involved in the within appeals.

When the cases were called for trial the indictments were severed as to 34 defendants, all of them members of the union, and were dismissed as to five defendants, all of them officers of the union. The officers against whom the indictments were dismissed were William Devery, President of the Union; Thomas L. Hickey, Secretary-Treasurer; Samuel Brennan, Recording Secretary; John Flaherty, Trustee, and Thomas Clarke, Business Agent. The only officials of the union who remained in the case were William Campbell and Austin Furey, Business Agents.

During the course of the trial, and before any testimony had been adduced, the Government moved to consolidate both indictments. This motion was granted over the objection of the respondents. In the course of the trial the indictments were dismissed as against a number of other defendants and as the case went to the jury the array of defendants consisted of Local 807 and 26 individuals, two of whom were Business Agents of the union, and the others its members.

All of the defendants were found guilty under both indictments. Some of the individual defendants were found guilty on the first count of the Racketeering indictment; others on two counts and the balance remaining on all four counts of the indictment.

The Indictment

The indictment alleges, in substance, that beginning the 1st of December, 1936, Local 807 and the individual defendants conspired to compel and coerce the owner of every truck entering New York City from another state to pay the sum of $9.42 for each large truck and $8.41 for each small truck which transported merchandise from a state other than the State of New York into the metropolitan area of New York.

The Evidence

At the trial the Government claimed that on or about the 1st of December, 1936, Local 807 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, an affiliate of the American Federation of Labor, conspired with the individual defendants named in the indictment to compel and coerce the owner of each truck transporting merchandise from states other than New York into the metropolitan area of New York to

pay the sum of $9.42 for each large truck and $8.41 for each small truck.

In support of this claim the Government produced a great number of witnesses who testified substantially to the following:

Local 807, an organization consisting of approximately 10,000 members, was engaged in a campaign to compel the operators of trucks transporting merchandise into the City of New York from points outside the State of New York to enter into collective bargaining agreements with Local 807 for the sole and distinct purpose of procuring employment for its members within the City of New York. The union had one standard form of contract which all employers were required to sign irrespective of whether they were operators of over-the-road trucks or operators of local trucks. This contract contained schedules of wages graded according to the kind of truck driven, and, in addition, contained the following:

> "Eight hours to constitute a day's work from Monday to Friday, inclusive. Seven hours to constitute a day's work on Saturday. Time to be taken when arriving at stable or garage at A. M. and leaving same P. M. Overtime to be paid at the rate of time and one-half per hour pro ratio as per eight hour day" (Government's Exhibit 4, fol. 7607).

During the period mentioned in the indictment, the individual defendants, other than Campbell and Furey, stationed themselves at tunnels, ferries and other points of entry to Manhattan (R. 195, 233-235, 426-427) and informed operators of trucks transporting merchandise into New York City that under the rules of the union they would have to hire members of Local 807 to drive and unload their trucks within the metropolitan area, and that they would not be permitted to unload unless they complied with the rule. The accused insisted that they be hired to drive and unload, or at least unload, all over-the-road trucks, for which service they demanded the sum of $9.42

for each large truck and $8.41 for each small truck, which sums were equal in amount to the wage scale of Local 807—the higher sum representing the wage scale for the operation of a large truck and the lesser sum representing the wage scale for a small truck.

Some of the operators resisted these demands, but the accused enforced their claims in some instances by threats of violence; in one instance by actual violence to a driver; in others by persuading receiving clerks and platform men not to receive the merchandise which the shippers were seeking to deliver.

Some time after the commencement of the alleged conspiracy a number of the operators entered into agreements with the union, by terms of which its members were to assume control of the trucks as soon as they entered the city, drive them to their destinations, and unload them.

All of the accused were bona fide truck drivers and bona fide members of the union; and all of the accused on almost each and every occasion *rendered satisfactory and substantial services in return for the payments they received. In fact, a number of the accused agreed to work and did work for a lower scale of wages than that set by the union.*

POINT I

Neither the acts complained of nor the actors involved are within the contemplation of the law under which the defendants were indicted and convicted.

We respectfully submit that neither the acts complained of, nor the actors involved in this case, come within the purview of the Anti-Racketeering Act as we understand it—and as we believe it must be construed in order to save its constitutionality.

The questions of constitutionality and the manifest intention of Congress in enacting this Act have been dis-

cussed in the other briefs, and we shall not discuss these matters here again, but merely point to the utter lack of proof which would even remotely bring this case within the intentions of Congress.

The record discloses that small groups, consisting generally of two or three men, advised operators of trucks carrying merchandise into New York City from other states that they would not be permitted to unload unless Local 807 men were hired. In this fashion at least one of the members of the group usually procured employment at a rate of $9.42, and sometimes less, per day. These groups acted independently of one another and there was no proof whatever that they at any time conspired or agreed to attain a common purpose. The only thing in common between them was that they were all members of Local 807 and the only thing in common in their conduct was that they all stated that under the union rule "City men" must be employed in New York City at union rates of pay, and that out-of-town trucks could not "unload" unless they complied with the rule. There was no uniformity as to the obtaining of union contracts; nor as to actual enforcement of the rule as to "unloading" by "City men" only; nor even as to the actual rate of pay when unloading.

It is true that there was some evidence of violence and threats of violence on the part of some of the accused, but these were the individual acts of the perpetrators, which were not sanctioned or ratified by their co-defendants. Assaults and threats were the rare exception; and those that did occur were not in pursuance of any agreement or conspiracy. The overwhelming majority of the defendants —and this is established by the evidence—religiously refrained from making threats or assaults; and those who did, with possibly one exception, were motivated by a desire to obtain work. Clearly, if any agreement existed between the defendants, it was an agreement to procure employment or contracts by advising operators of over-the-

road trucks that under the rules of the union "City men" would have to be hired, and there is nothing in this agreement which indicates that threats and assaults were in the contemplation of the parties. In fact, violence and threats were expressly prohibited. This not only appears from the general conduct of the vast majority of the union, including most of the defendants, but from the statement of Campbell, who, at a meeting of the union in April, 1937, in no uncertain terms, denounced the practice of "gypsy-chasing" (fol. 6368).

As further proof that threats and violence were not in the contemplation of the accused, we find that on almost every occasion when over-the-road operators refused to comply with the request to hire a "City man", the defendants either went away without making threats or assaults, or advised the intended consignee that the operator was not a member of the union.

There was only one instance of serious violence placed before the jury; and this relates to an assault which is not even remotely connected with the issues involved. This concerns an assault by Edward Weinheimer, one of the defendants, upon one Brown, a member of Local 807. The testimony discloses that a fight ensued between Weinheimer and Brown because of personal differences, and the record is rather nebulous as to which of the two was the aggressor (R. 2077, 2078). But one thing is certain, and that is that there was no claim that the assault was committed in order to obtain money from the man assaulted or from his employer. In fact, there could be no such claim, for both Weinheimer and Brown were employees of the same employer, with whom the union was already in contractual relations.

Apart from this incident there is only one instance of the use of force or violence* or the threat thereof in con-

* This is the only instance that we can recall of the use of force or violence, in the entire case, covering a period of over a year and a half, and including all of the 3,000 members of the union engaged in "over-the-road" transportation.

nection with an attempt to obtain money, property or other valuable consideration. The testimony with respect to this, as given by the Government's witness, was, that in a *dispute over an item of pay* there was a scuffle between the defendant and the witness, in which the defendant attempted to take some money out of the witness' pocket, the precise testimony being:

> "Q. Did he touch you— A. Only ripped my pants. I went home and pinned them. I know that much". (fol. 5440).

But even if we assume that the accused conspired and agreed to use violence and threats of violence to enforce their demands, such proof, standing alone, would be insufficient to warrant a conviction under the Act. It would still be necessary for the Government to establish that the underlying purpose of the conspiracy was to levy tribute upon industry. The whole tenor of the Act compels the conclusion that Congress intended to stamp out racketeers who preyed on industry. It was not enacted to punish combinations and conspiracies which have as their purpose the procurement of employment. The Act is concerned with the objective of the combination; and those objectives which are not embraced within the Act, are not brought within its sweep merely because they are attended by violence.

As we have previously stated, all of the accused were bona fide truck drivers and bona fide members of the union; and all of the accused had but one objective, namely, the procurement of employment; and all of the accused on almost each and every occasion rendered satisfactory and substantial services in return for the payments they received. And it is equally true that the defendants never made any inquiry with regard to the amount of labor they would have to perform in exchange for the wages de-

manded and that each and every defendant performed his duties of employment to the limit of his capabilities.*

It is apparent from the foregoing that the accused were motivated by an honest endeavor to procure employment and that the services rendered by them were not subterfuges designed to cloak or cover the exaction of tribute. We respectfully submit that for this reason alone the indictment pending against the defendants should be dismissed.

POINT II

What was actually proved against the accused is clearly within the exemptions and *proviso* of the Act.

Government counsel did their best to keep the jury from examining the evidence against each individual defendant separately, and tried to focus their attention "on the con-

* Name of Defendant	Folios
Peter Waskiewicz	3877, 3878, 5269, 5270
Joseph Bender	827, 828, 829
John Gaughan	4245, 4279, 4280, 4292, 4339, 4346, 4356, 4357, 5259, 5260
Manuel Magan	5244, 5246
Samuel Reichler	4113, 4117, 4131
John Horan	3729, 3753, 3757, 3793, 3794, 3808
Leonard La Marne	5284, 5286, 5296, 5306, 5309, 5312
Frank Downs	4804, 4805
William Simpson	3634, 3640, 3641
James Murphy	4379, 4384, 4409
Tony Venditti	986, 1325, 1331, 1482, 1483, 4122, 4742, 4819
Bernard Randazzo	1345, 3859, 3886, 4740, 4741, 4858, 4859, 4902, 4903
Abraham Klenofsky	3390, 3391, 3604, 3605, 3610
Robert Dillon	1184, 1185, 4864, 4882, 4903
George Needelmann	1299, 1382, 1541, 1716, 1717, 1897, 1899, 4740, 4741
Edward Weinheimer	1950, 1952, 2243, 2246, 3189, 3190, 3235, 3236, 3254, 3257
Andy Jakakas	3608, 3612
George Bagley	3608, 3609, 5281, 5282
Harry Zollinger	3516, 3517, 5133, 5135, 5136
Joseph Deegan	3727, 3729, 3730, 3753, 3757
John Weinheimer	1967
Michael Cahill	2452, 2459-2461, 2487, 2492
Morris Reichler	4079, 4084, 4101, 4102
Thomas Sharkey	1280, 3382, 3383, 3388, 3389

spiracy as a whole". In discussing the alleged "conspiracy" it must be borne in mind that there was no *direct evidence* of any conspiracy. That much, we take it, will be conceded on this appeal. The claim of conspiracy is based on an alleged pattern which is supposed to be common to the conduct of all of the defendants. Let us examine that "pattern" and see what it really amounts to. Upon such examination, we respectfully submit, the first thing that will be discovered is, that there was *no pattern that would unite all of the defendants in one common purpose.*

As pointed out, if any one fact is undeniable in this case it is the fact that each defendant either alone or with one or two associates had a purpose of his own,—*namely, to get a job.* Most, if not all of them, were perfectly willing to sacrifice the interests of the union, if that were necessary, for the purpose of getting the jobs. All, that is, with the exception of Campbell and Furey, who, as business agents of the union, naturally were trying to get collective-bargaining agreements from the employers, and as far as possible, to prevent "under the hat" arrangements.

Disregarding, however, this diversity of objective, as proved by the diversity of action, and assuming for this discussion that all the defendants united in one purpose,—there is only one purpose discovered, and that is to obtain collective-bargaining agreements between the labor-union defendant and the employers involved, under which only members of the union, including the appellants herein (exclusive of Campbell and Furey), would obtain employment. Needless to say, that is not only a "legitimate object" of a labor-union, but probably the most legitimate object of any labor-union.

But even if it were permissible to "pulverize" the conspiracy charge in the indictment, so as to break it up into a number of conspiracies,—as it is not permissible,—the remaining pattern would be one of attempts on the part of these defendants (always excluding Campbell and Furey) to obtain employment, with or without contractual relations

between the union and the employers. But that, also, is within the exceptions of the Act, even if we should assume that it is not within its *proviso*. For the obtaining of wages is within the specific exceptions of the statute, emphasized by repetition in two separate places.

In his endeavor to escape the force of the specific exemptions in the statute with respect to wages paid for work done, Government counsel painted a picture of obtaining pay without work, and based that picture on two isolated instances, neither of which tells a complete story. These two incidents relate to the defendants Murphy and Ed. Weinheimer; both of them were related in a rather confused manner by the Government witnesses. The clearer story concerns the defendant Murphy, and the testimony regarding him was given by the witnesses Zohlman, Ronald Carman and Carll, and is printed at pages 1458-1479 of the record.

Some time in the spring of 1937, Zohlman's trucks were "stopped" in New York City by some unidentified men wearing buttons of Local 807, who told his drivers that they could not unload unless they used "City men" within the City. The difficulty having been reported to him, Zohlman discussed the matter with a friend or neighbor in his home town, Bridgeton, New Jersey, by the name of Murphy, who told him that his brother,—defendant Murphy,—was a member of Local 807 and could probably help him out of the difficulty. Zohlman thereupon came to New York City with his neighbor Murphy and sought out the defendant and had a conversation with him, as a result of which the defendant became his employee. Some time thereafter defendant Murphy brought to Zohlman the standard union contract and told him that he would have to sign it; whereupon he signed the agreement, which is dated June 8, 1937, and is in evidence as Government's Ex. 51. In the meantime a dispute had arisen between one of Zohlman's drivers and the defendant Murphy, because Murphy had refused to help with the unloading, claiming to have been hired as an "associate driver" and

that his real function was to protect Zohlman's trucks against "molestation" by others. The Government's witnesses did not say what the nature of the "molestation" was that Zohlman's trucks were being "protected" against; and Murphy, on the witness stand, said that it was a question of another union also operating in New York,—there being two unions claiming jurisdiction,—and that Zohlman preferred to deal with 807 rather than the other union. It also appears that the period during which Murphy refused to work was a brief one, and that he later did work for his pay. There is no direct testimony as to just how long the period during which he did not work lasted, or the exact relation of its termination to the signing of the union contract. But the inference is clear, and certainly permissible, that that period ended with the signing of the contract.

It is on two such isolated instances that the alleged pattern in this case is based. That they were exceptions to the real pattern underlying the case is beyond question,—for even the defendant Murphy refused to work only during a short period, and that period apparently was the time when there had been no union contract. But, what is most significant, is, that Murphy's receipt of pay without work, during this brief period, was not the result of any attempt by Murphy to prevent Zohlman's trucks from unloading, *but rather the result of Zohlman's seeking out Murphy in an endeavor to gain his assistance in unloading his trucks.*

We need not go into the question here as to whether or not Zohlman's purpose was to get Murphy's assistance in avoiding the making of a contract with a union. Nor need we inquire into the question as to whether or not Murphy had originally succumbed to the temptation of pay without work, and had tried to help Zohlman in accomplishing his purpose. It is sufficient to say that the incident was in contrast to all the other occurrences related by the witnesses, in which the union or any other of its members was involved. It is also contrary to the "pattern" which Mr. Cahill wove before the jury, or the picture painted by him, as the result of which the defendants stand convicted.

By means of these isolated instances, the District Attorney created an entirely false picture of the situation: the use of force and violence for the purpose of obtaining pay without working therefor. But when we go behind the machine which effected the combination of two utterly contradictory pictures, we find that when there was a stoppage of any truck by any one of the defendants, it *was not followed by the receipt of pay without work.* And on the single occasion when there was a claim for pay without work, we find that there was no previous stoppage by the defendant, nor any privity between the defendant and the stoppage; and that the defendant had been sought out and asked to undo a difficulty which had not been caused by him. Most important of all, the alleged pay without work was so alien to the real "pattern" in the case that it could not last.

To sum up: The real pattern was either a general pattern underlying the work of the union itself and its entire membership, which was to obtain collective bargaining agreements. Or, if we disregard the union itself, and follow the activities of the various individuals and groups, in so far as they were pursuing their own purposes, the pattern was an attempt to get a day's pay for a day's work.

But there is another aspect which must be considered in this connection, even if what is clearly an exceptional case were to be considered part of a pattern. The charge would then be that the Union maintained that if the out-of-town truckers insisted on having their own men drive in New York City, they could do so provided a similar number of members of the Union were paid the wages which they would have received had they done the work. We respectfully submit that the attempted enforcement of such a rule would not be outside the "legitimate objects" of a labor-union, so as to deprive either the Union or its members of the protection of the *proviso* of the Act. Such a rule is not unknown in the labor-union field. In fact it is a well-known rule of one of the largest labor-unions of the country,—the American Federation of Musicians. Under

the rules of that union, local musicians are entitled to all the work in their line within their locality; and when outside musicians, even though members of the union, come into a city, a similar number of local musicians, members of the *local* union, receive the regular union wage, even though they actually do no work. These local musicians are known as "stand by" performers. We are not called upon to approve or disapprove of such a rule. What *is* important here is that clearly these "stand by" musicians are not within the purview of the Anti-Racketeering Act, because of the special *proviso*.

In this connection we respectfully call the attention of the Court to the fact that the Supreme Court, in a well-known case, could not bring itself to believe that ordinary labor-union activities could be prohibited by injunction under the law of the State unless the highest court of the State specifically so declared.

> "As this Court is not the final authority concerning the laws of New York, we say but a word about them. *We shall not believe that the ordinary action of a labor-union can be made the ground of an injunction* under those laws until we are so instructed by the New York Court of Appeals."
>
> *Paine Lumber Co.* v. *Neal*, 244 U. S. 459, 471.

We respectfully submit that it is utterly unbelievable that Congress, while enjoining upon the courts extreme care in construing this Act so as not to impinge upon the activities of labor-unions,—and going to the extreme length of withholding from them jurisdiction to do so,—intended that what has been a well-known practice of a well-known labor-union for many years, may be punished as a most heinous crime under this extraordinary Act.

POINT III

No case was proved against defendant Murphy under the Act.

Because of the exceptional position of the defendant Murphy, perhaps a few words should be said about his case. As already stated, the testimony is somewhat confused as to the exact nature of the arrangement between Zohlman and Murphy. Two things are clear, however: One, that this was a case by itself, utterly foreign to the general pattern; indeed, it was apparently an unsuccessful attempt to counteract the pattern, and the other defendants cannot therefore be charged with anything that might be chargeable against defendant Murphy. But there is nothing chargeable against defendant Murphy which could sustain a conviction under the indictment herein. It must be borne in mind that defendant Murphy is not charged with doing anything by himself but with being a "co-conspirator" with others in a common conspiracy. Clearly, no charge of conspiracy can be based against him on something, no matter what its character, which was not part of the conspiracy of which the others were or could be guilty.

The second thing to be borne in mind is that the conspiracy alleged in the indictment is one to use force and violence, or threats thereof,—and, clearly, there was neither the use of force or violence, nor the threat thereof, by Murphy or anybody for whose acts he could be held accountable. The case therefore comes within the principle of the *McGlone* case. The language of the Court in the *McGlone* case,—a case where the amount involved was large enough to justify the much-abused term of "racket"—is certainly applicable with much greater force to the $9.42 per day which Murphy received during a week or two. Said the Court:

> "The following interrogateries are in order, based upon the requirements of the Act:

1. Who sought for this interview, Mr. Follmer or Mr. McGlone?

The uncontradicted evidence shows that it was sought for by Mr. Follmer."

U. S. v. *McGlone*, 19 Fed. Supp. 285, 289.

POINT IV

There is no proof in the case to sustain a conviction against the defendants Campbell and Furey.

The case of the defendants Campbell and Furey also requires separate consideration. All the other defendants are charged with obtaining money. Whether the "obtaining" of the money comes within the purview of the statute,—the *receipt* of money is undisputed. But that is not the case as to Campbell and Furey; *there is not a scintilla of evidence that Campbell or Furey ever received a dollar from any trucker either with or without his consent.*

As pointed out in the brief for Local 807 the indictment contains a paragraph in which the charge is made of the receipt of sums of money ranging from $1,000 to $100,000. There is no statement in the indictment as to who received these fabulous sums; but we may assume that if anybody had received them it would probably be the defendants Campbell and Furey, who were officers of the union, rather than ordinary workmen like the other defendants. *But no attempt was made to prove that allegation of the indictment.* Certainly, no claim will be made here that there is any evidence in the case to sustain it. It is clear that the allegation was put into the indictment for the purpose of creating "atmosphere",—to be read to the jury, not to be proved.

Nor is there any proof of any use of force or violence, or the threat thereof, by either Campbell or Furey, for any purpose prohibited by the Act under which the indictment herein was laid,—or for any other purpose for that

matter. It is our belief that the entire record does not contain a single statement by any witness in any way connecting the defendant Campbell with the use of force or violence, or the threat thereof. The only piece of evidence in any way connecting the defendant Furey with any violence, is a statement by one government witness that Furey had sent some help to the defendant Weinheimer in the fight between Weinheimer and Brown. It will be recalled that that incident had not the slightest relation to the crime charged in the indictment, but was a personal fight between two members of the union, both employed by an employer who was in contractual relations with the union.

On the other hand, there is evidence in the case that Campbell strongly discouraged any kind of "under the hat" arrangements between employers and members of the union,—apparently in an honest endeavor to serve the real purposes of the union, which was to obtain collective bargaining contracts. The government's witness Beatty testified that when Campbell discovered the "under the hat" arrangement between defendant Cahill and the S. & B. Transportation Company, violative of the union agreement (Government's Ex. 15), he ordered the "under the hat" arrangement discontinued and the union contract observed (fols. 2535-6).

No wonder the witnesses for the government concentrated their fire on Campbell and Furey, the only officials of the union who were on trial. For although Beatty himself testified on cross-examination that he had been in financial difficulties long before he signed the union contract he tried to create the impression on the jury,—and apparently succeeded—that it was the signing of the union contract that put him out of business. Possibly he believed that it helped to put him out of business. He testified that in trying to get the defendant Cahill to agree to the "under the hat" arrangement, whereby Cahill's pay was reduced to $40 a week, he told Cahill that if he were compelled to pay the union's scale of wages he would have to go out of business. The claim was, of course, preposterous. For it

appears in evidence that the B. & B. Transportation Company operated some twenty trucks between Uniontown and New York, and all that he was required to employ in New York for the purpose of unloading was one man, or at most two men. Surely, the difference in the pay of one man, or even two men, between the union scale and the "under the hat" arrangement,—or even the hiring of an additional one or two men,—could not possibly have the result of putting a concern like that out of business. But such is the in-bred prejudice against the payment of union wages that employers easily get themselves to believe the impossible. And on occasion,—with the able assistance of prosecuting attorneys,—they even make juries believe it, as the result in this case clearly demonstrates.

For, after all is said *pro* and *con*, there is no escaping the conclusion that whether we look at the anti-trust end of the case or at the anti-racketeering end of it, all of the defendants,—union, union officials, and plain union members,—stand convicted of *being, officiating in, or belonging to, a labor union.*

POINT V

The evidence clearly demonstrates that there was no single conspiracy, assuming that there was any conspiracy at all.

We respectfully submit that an examination of the evidence will demonstrate beyond peradventure of a doubt that there was no such single conspiracy as is charged in the indictment. It is of the essence of a conspiracy that the conspirators have a *common purpose.*

U. S. v. *Kissel*, 218 U. S. 601;
U. S. v. *Frisbie*, 28 Fed. Rep. 808, aff'd 157 U. S. 160.

The U. S. Attorney in his summation dwelt on an alleged pattern. We have conclusively shown, we believe, that there was no "pattern" aside from the endeavor of the union to obtain collective bargaining agreements and of its members to obtain employment. But assuming that there was a "pattern", that does not at all prove a *common purpose*. A *common* purpose is not the same as a *similar* purpose. *Similar* purposes may not only be different from, but even opposed to, a common purpose. And the same is true of a "design" which is sometimes used in connection with conspiracy. A glance at the advertising pages of any newspaper or popular magazine will show that certain classes of advertisers follow a common "pattern" and they all have a similar purpose—to attract trade. But clearly, they have no *common* purpose. On the contrary, each man's purpose is to take away as much trade as possible from his opponent who follows the same advertising "pattern". Similarly, in the realm of crime, widely separated individuals or groups, operating in the same field or in different fields, may follow, in their operations, similar patterns which have proved successful in the past, or which they, separately, believe would be successful in the future. But clearly, that does not make all these individuals or groups *one conspiracy*, since each pursues his own individual or group purpose. *And that is the ultimate test of the legal problem before this Court on this branch of the case.*

An examination of the evidence will demonstrate that there was no object or purpose which can be said to have been common to the twenty-five defendants. The evidence shows that each one was interested in his own job. At most, two or possibly three were interested in getting jobs from the same employer,—although there is no sufficient evidence even of that. But we need not discuss the quality of the evidence with respect to such a possible charge, since it would make no difference if that had been proved to have been the case. For, as already pointed out, a number of different conspiracies do not make *one*

conspiracy. Assuming for the purpose of this argument that instead of having single and separate purposes, each for his own job, the twenty-five defendants could be grouped into a dozen groups; and assuming further that under the law each such group could be convicted of conspiracy because of the things which had been proved against it,—that would still be far short in law from the one conspiracy charged in the indictment, and the prosecution must fail.

Clifford v. *Brandon*, 2 Campb. 358;
Newall v. *Jenkins*, 26 Pa. 159;
U. S. v. *McConnell*, 285 Fed. Rep. 164;
U. S. v. *Wills*, 36 F. (2d) 855;
Meyers v. *U. S.*, 36 F. (2d) 859;
Wyatt v. *U. S.*, 23 F. (2d) 791;
U. S. v. *Falcone*, 109 F. (2d) 579 (C. C. A. 2, 1940);
U. S. v. *Siebricht*, 59 F. (2d) 976;
Terry v. *U. S.*, 7 F. (2d) 28.

POINT VI

The record conclusively establishes that the accused were not engaged in a conspiracy to violate the Act.

In support of our claim that the record conclusively establishes that there was no proof of a conspiracy on the part of the defendants to violate the Act, we submit herewith a summary of the testimony against a number of the defendants. Believing that the legal questions raised are of such a nature as to require a dismissal of the indictment, we do not deem it necessary to separately discuss the evidence against each of the defendants.* But we do believe

*The testimony against the following defendants has not been summarized—Leonard La Marne, Frank Downs, William Simpson, Tony Venditti, Bernard Randazzo, Abraham Klenofsky, Robert Dillon, George Needelmann, Edward Weinheimer, Morris Reichler and Thomas Sharkey. But the testimony against them, like the testimony against the defendants which appears herein, shows that they were seeking employment and rendered satisfactory services in exchange for the wages they received.

that the following summary will show beyond peradventure of doubt that the accused were engaged in an honest endeavor to procure employment and that they rendered satisfactory and substantial services in return for the payments they received.

Andy Jakakas

The only evidence against Andy Jakakas was that he worked for Carleton C. Hooks. It does not appear under what circumstances he procured employment but it does definitely appear that he rendered services in exchange for the wages he received (3608, 3612).

George Bagley

The only evidence against George Bagley was that he was hired by Hooks some time subsequent to a conversation had between Hooks, Campbell, Furey and John Weinheimer, during which Hooks agreed to employ 807 men. The record does not disclose under what circumstances Bagley was employed, but it does definitely appear that he performed his work satisfactorily (3608, 3609, 5281, 5282).

Harry Zollinger

The only testimony against Zollinger was given by William F. Betts and Earl Hudson. Betts testified that in July, 1937, he saw Zollinger and several other men at the place of business of Francis H. Leggett. Betts did not speak to Zollinger but did speak to some of the other men; these men showed him their union books and stated that under the rules of the union, he had to hire a City man. Hudson testified that Zollinger worked on his truck on several occasions and was paid for services rendered (3516, 3517, 5133, 5135, 5136).

Joseph Deegan

The only witnesses against Deegan were Howard A. Miner, Lillian P. Miner and Michael Agoes. Howard

Miner testified that some time after he entered into an agreement with Local 807, he hired Deegan to work for him. Deegan, according to his testimony, was one of his schoolboy friends, who at all times rendered satisfactory services and with whom his relations were always friendly (3727-3730, 3753, 3757). Lillian Miner testified that two weeks before her husband went into bankruptcy, Deegan asked her for the salary due him and that when she stated that as far as she knew, Deegan was not entitled to payment, Deegan said that unless she paid him the money which was due him her trucks would not be permitted to operate in New York City. Michael Agoes, an employee of Howard Miner, testified that Deegan unloaded his trucks on many occasions; made deliveries for him; and picked up merchandise (3808, 3809).

John Weinheimer

Russell B. Goddard, Floyd E. Fronk and Carleton C. Hooks were the only witnesses against John Weinheimer. Goddard testified that at the instance of Edward Weinheimer, he employed John Weinheimer, and as there was no complaint regarding the services rendered by John Weinheimer, we must assume that they were in all respects satisfactory. Floyd E. Fronk testified that on one occasion, *Edward Weinheimer* took his bills of lading and told him that he could not have them until he paid Edward Weinheimer the sum of $3 which was due him. The following day John Weinheimer told Edward Weinheimer to return the bills of lading to the witness, and this was done. Carleton C. Hooks testified that John Weinheimer was present when he (Hooks) told Campbell that his trucks were being followed to various consignees and that the consignees were being told that a strike would be called in their establishments if they accepted merchandise delivered by the witness (1950, 1952, 2243, 2246, 3189, 3254).

Peter Waskiewicz

WILLIAM F. BETTS, JOSEPH BUGLIO and HARRY L. OWENS were the only witnesses against Waskiewicz. Betts testified that in July or August, 1937, Waskiewicz and two other men told him he would have to hire a union man (3483, 3486, 3488, 3489). He and Waskiewicz then had a discussion as to whether it was necessary that a union man be hired, and subsequently they went to the offices of the FBI, where Waskiewicz told the agents that Betts was "supposed" to have a City man on his truck (3491, 3492). Buglio stated that Waskiewicz unloaded his truck and was paid therefor (3877, 3878). Owens testified that Waskiewicz unloaded his truck on several occasions and was paid therefor (5269, 5270).

Joseph Bender

GEORGE WILLARD STELLER, GUSTAVE HAVERSAT and THEODORE R. STELLER were the only witnesses against Bender. George Steller, a chauffeur for Theodore R. Steller, testified that on several occasions Bender informed him that according to the rules of the union, it was necessary that a City man be employed to unload his truck in New York City (711, 712). Haversat, a chauffeur for Theodore R. Steller, testified that Bender told him it was necessary that he employ an 807 man and that Bender advised him to tell his employer to speak to him (Bender) regarding the loading of trucks (795, 796). Bender was subsequently hired every time the witness came to New York, and on each of these occasions Bender operated the truck, unloaded same, and picked up freight (827, 828, 829). Theodore R. Steller testified that he discharged Bender in November, 1937, because Bender had damaged merchandise and had handled trucks improperly (936, 937). He further testified that when he informed Bender of his reason for discharging him, Bender told him he could not do so because he was his City man (937).

John Gaughan

EDWARD WARREN, JOHN PALMER, MAX SNOWHITE, THEODORE J. WILLIAMS, HARRY T. TREMBLEY and HARRY L. OWENS testified against Gaughan. Palmer testified that shortly prior to his contract with 807, which contract was dated the 14th of April, 1937, he hired Gaughan on the recommendation of one Novick (4266, 4267, 4269). He paid Gaughan $35 a week for his services both prior and subsequent to the signing of the contract (4279, 4280); and, according to Palmer, Gaughan did his work satisfactorily (4280). He further testified that he did not know whether Gaughan was a union man at the time he hired him, and that Gaughan never spoke to him in reference to the signing of a contract with 807 (4281, 4282). Warren, a chauffeur for Palmer, testified that Gaughan was hired by his employer as his regular City man (4245). Williams, a chauffeur for Palmer, testified that on occasion Gaughan operated his truck and unloaded same (4339).

Snowhite testified that on the 30th of November, 1937, Gaughan told him he would charge him $5 to unload a truck and that he told Gaughan he was satisfied with the proposition (4292). At the time of the conversation, he paid Gaughan $9.42 which he owed him and thereafter paid him $5 either in cash or by check for each load he unloaded (4292). Trembley, a chauffeur for Snowhite, testified that on one occasion he was asked by two men whether he had a union man, and that when he told them that Gaughan was his City man, they stated they would wait for Gaughan to arrive. Shortly thereafter Gaughan appeared, and the men left. Gaughan then unloaded or assisted in unloading the truck (4346, 4356, 4357). Owens, a chauffeur for Snowhite, testified that in November, 1937, Gaughan told him he would have to have a City man in order to unload (5258, 5259). Gaughan subsequently helped him unload, and after doing so told him to tell Snowhite to send him a check (5259). After this incident, he, at the direction of Snowhite, woud meet Gaughan at different places, and each time that he would so meet him, Gaughan would render services (5260, 5276).

Manuél Magan

BENJAMIN MATTSON testified that Magan and Venditti stopped his truck (983, 986). EDWARD A. STROZYK testified that after he signed a contract with 807, Magan went to work for him (1179, 1180).

DONALD SAMUEL HUNTER testified that in the fall of 1937, he asked Magan why the men refused to unload his (Hunter's) truck, and that Magan replied that it was because he refused to sign a contract with 807 (5156). Magan further told him that unless he signed a contract, he would not be able to unload his trucks in the City of New York, and that he (Magan) could not accept pay from the witness unless he signed a contract (5158). Two weeks later, he visited Magan for the purpose of discussing a contract with him, and after a talk, he went with Magan to union headquarters, where he saw Hickey, Campbell, Devery and an unnamed bookkeeper (5159, 5160). Campbell told him that he would not be able to have his trucks unloaded unless he signed a contract (5161). In September, 1937, Magan told him that he (Magan) was not allowed to unload a truck belonging to the witness, and that he (Magan) would not permit it to be unloaded unless a contract was signed (5171). LOUIS LAYMAN, a chauffeur for Hunter, testified that in September, 1937, Magan told him that he would have to hire a City man (5243). After the conversation, Magan helped the witness unload but was not paid therefor that day (5244). After the aforesaid incident, Magan helped him unload many times and was paid $9.42 on each of those occasions (5246).

Samuel Reichler.

ROBERT E. A. BOYLE, PAUL M. TRAPANI and ALFRED L. HUMMEL were the witnesses against Reichler. Boyle testified that Reichler told him on the 11th of April, 1938, at the distribution plant of Procter & Gamble, that he was at the aforesaid plant for the purpose of working on trucks be-

longing to the Hummel Company. Reichler further told him that he was a member of 807 and as such, had a right to load and unload trucks (1111). Trapani testified that on the 11th of April, 1938, Reichler told Boyle that he was at the distribution plant of Procter & Gamble because his brother was employed by the Miller Transportation Company (4083). Hummel testified that in February, 1938, Reichler told him that he would have to pay him $9.42 per day for his services as a helper (4113, 4117). Three days later, Reichler asked him for money due him for services rendered, and he told Reichler that he did not think he was going to pay the money demanded. Reichler then said that if he did not pay the money, his trucks in all probability would not return (4117, 4118). After this conversation, he sent $28.26 to Reichler (4118). About a week after the last mentioned conversation, Reichler asked him why a "third payment" had not been made, and he replied that he did not intend to pay (4119, 4120). He subsequently saw Samuel and Morris Reichler in his office in Allentown, at which time he was asked to sign a contract but he refused to do so (4128, 4129, 4130). On or about the 27th of March, 1938, Reichler asked him for wages due for services rendered, and he told Reichler that he would not pay. Reichler then said that if he did not, his trucks would not return (4131).

John Horan

Howard A. Miner and Michael Agoes were the witnesses against Horan. Miner testified that some months prior to his agreement with 807, which agreement was dated the 14th of December, 1936, he hired Horan at a weekly salary of $50 (3729). After he was so employed, Horan told him that if he desired to continue to operate, he would have to sign a contract with 807, and he agreed to do so (3735, 3736). In January or February, 1937, he told Horan that he could not afford to pay the wages under the contract and Horan told him that if he went out of business he

(Horan) would procure employment with someone else (3743, 3744). He further testified that his relations with Horan were always friendly, and that Horan first received $50 a week for working eight hours each day six days a week, and that he subsequently was paid the union scale (3753, 3757). Agoes, a chauffeur for Miner, testified that in the latter part of 1936 and some time thereafter, Horan and Deegan unloaded his truck (3793, 3794, 3808). On one occasion, when his concern was in financial difficulties, Horan and Deegan, who had rendered services, insisted that he refrain from returning to Connecticut until they received the salary due them, and he told them that he was willing to stay until they received their pay (3822, 3823).

William Campbell

Anna E. Chudy testified that she made complaint to Campbell, Brennan, and others, at 807 headquarters, that several of her employees were rude to customers and had failed to handle trucks properly. She was told that since she did not belong to the union, they could do nothing for her. She asked whether her drivers could join 807 and they replied that they had enough men of their own. She was not asked at any time to enter into a contract with 807 (627, 628, 631, 632).

Russell B. Goddard, Traffic Manager of the Brookline Trucking Company, testified that some time subsequent to the making of a contract between Brookline and 807, Edward Weinheimer called a strike because he felt that he was entitled to overtime which Brookline refused to pay (2355, 2356). *Goddard advised Campbell and Furey of the strike and they, in his presence, discussed with Lovell, the owner of Brookline, Lovell's failure to pay his help on time; dishonored checks he had given his employees; and Lovell's failure to procure unemployment insurance and security insurance. After this discussion, Campbell said to Lovell, "I don't think you want to pay the union scale.*

* * * *We have had a lot of trouble with you. The men that work for you are in a turmoil all the time about their wages and hours. If you can't pay your help, you might as well go back to Boston"* (2386, 2387, 2389). He had another conversation with Campbell and Furey regarding Edward Weinheimer's claim that he was entitled to be paid although he did not help in certain unloading which was done by others prior to 7:00 A. M. (2116, 2122, incl.). Campbell and Furey advised him that the contract between Brookline and 807 provided that a man was to be paid for any hours prior to the regular starting hour at 7:00 A. M., and that Weinheimer must render services before he could claim compensation (2124, 2125). On another occasion, he informed Campbell and Furey that he desired arbitration in connection with an alleged assault upon Lovell by Weinheimer (2129). Campbell and Furey told him to put Weinheimer back to work and that they would give him arbitration. He did so, and arbitration was had (2129, 2130). After the arbitration, Sheridan, the arbitrator, stated that if Goddard was willing and if the delegates were willing, Weinheimer could go back to work. Goddard stated that he was willing and Weinheimer went back to work (2365, 2366).

George Beatty testified that he made an agreement with 807 on the 27th of January, 1938 (2436, 2438). Subsequent to the signing of the contract, and in May, 1938, he told Campbell that he desired to discharge Michael Cahill because Cahill had wrecked a truck. When Cahill explained that the damage to the truck was accidental, Campbell told Beatty that he would have to retain Cahill as shop steward (2532, 2534). Campbell further told Beatty that he would not countenance any arrangement between Beatty and his employees whereby Beatty was to pay them less than the union scale (2536).

Cassius C. Perry testified that on the 9th of May, 1938, he went with Weinheimer to union headquarters, where they asked for Campbell, and that when they were informed

that Campbell was out of town, Weinheimer spoke to someone else who produced a contract, which the witness signed (3174, 3175, 3180). CARLTON C. HOOKS testified that he spoke to Campbell in December, 1936, regarding the fact that his trucks were stopped, despite his agreement to use 807 men occasionally. He told Campbell that his trucks were followed to various consignees who were told that a strike would be called if they accepted merchandise delivered by the witness. Campbell told him that he would have to sign a contract to use 807 men exclusively, and that if he did not, he would not be able to operate in New York. When Hooks pointed out to Campbell that his trucks were not coming into New York regularly, Campbell decided to dispense with the signing of a contract (3601, 3603, 3605, 3606). JOSEPH BUGLIO testified that after he was told by Dillon and others, in March, 1937, that he would have to hire a New York man to unload his trucks, he went with them to union headquarters, where he saw Campbell and others (3839). He was told that it was a union rule that any truck coming into New York City from a distance of more than forty miles would have to have a City man for unloading purposes (3851). On the 15th of March, 1937, he had a similar conversation with Clarke and Brenan, and on that day, he signed a contract with 807 (3856, 3857). RAYMOND E. STILES testified that after a conversation with Klenofsky in the Summer of 1937, he saw Flaherty and Campbell at union headquarters. They told him that he would be unable to unload his trucks unless he signed a contract, and this he did on the 9th of June, 1937 (3971, 3973, 3977). PAUL M. TRAPANI testified that a man named Balucci told him that he was in the vicinity of the Old New York Forwarding Co., in accordance with instructions from Campbell and Hickey (4098). JOHN PALMER testified that on the 14th of April, 1937, Campbell told him that if he failed to sign a union contract, he would not be permitted to "pull in" (4272). After this conversation, a contract was signed (4274). EMILY B. LIBE testified that after a conversation with one Franz, she went to union head-

quarters, where she spoke to Campbell. Campbell told her, in April, 1937, that she would have to have a City man on every truck that came into New York, and gave her a contract which he told her to sign (4454).

FRANK LO BIONDO testified that after speaking to one Stimus, he went to union headquarters, where he spoke to Campbell. Campbell told him that if he desired to deliver merchandise, he would have to sign a contract. *Campbell stated that one man would unload one or two trucks.* After this conversation, and on the 22nd of May, 1937, the witness signed a contract (4982, 4985, 4992, 4993). GEORGE HENRY HARBERT, chauffeur for Lo Biondo, testified that on one occasion, Stimus instructed him to stop unloading until he got in touch with Campbell. Stimus telephoned union headquarters, and asked for Campbell but Campbell wasn't there (5023, 5025). DONALD SAMUEL HUNTER testified that after a conversation with Magan, he spoke to Campbell, Devery, and others, at union headquarters, in September, 1937. Campbell told him he would be unable to unload trucks in New York City unless he signed a contract, *and that he would allow one man to work on two trucks, provided the work could be accomplished in eight hours* (5161, 5162). WALTER STANTON, employed by Donald S. Hunter, testified that in October, 1937, Magan told Campbell, in his presence, that he would not permit the witness to unload unless a contract was signed. The witness stated that he could not identify Campbell and that he would not know him if he saw him (5221).

Austin Furey.

RUSSELL B. GODDARD testified that some time subsequent to the making of a contract between Brookline and 807, Edward Weinheimer called a strike of the Brookline employees because Weinheimer felt that he was entitled to overtime, which Brookline refused to pay (2031, 2032, 2033). *Goddard advised Campbell and Furey of the strike, and they, in his presence, discussed with Lovell, the owner*

of Brookline, Lovell's failure to pay his help on time, the dishonored checks he had given his employees, and Lovell's failure to procure unemployment insurance and security insurance (2385, 2386, 2387, 2389). After this discussion, Furey told Lovell that he could go back to Boston if he did not desire to pay union wages (2386). Goddard told Furey that Weinheimer refused to bring a shipment of merchandise into the premises of the Liberty Mutual and had left same on the sidewalk (2020). To this, Furey replied that Weinheimer should have made delivery, and reprimanded Weinheimer for his failure to do so (2025). On another occasion, he told Furey that Weinheimer had been drinking, and Furey stated that he could not decide how much a man could drink *on his own time* (2025, 2026). On still another occasion, he spoke to Furey and Campbell concerning the alleged striking of Lovell by Weinheimer and demanded that the matter be submitted to arbitration (2129). Furey and Campbell told him to re-hire Weinheimer, who had been discharged, and that they would then give him arbitration (2129). He did so, and was given arbitration (2129, 2130). He had another conversation with Campbell and Furey regarding Edward Weinheimer's claim that he was entitled to be paid although he did not render any services (2116-2122, incl.). Furey told him that it was essential that Weinheimer render services in order to receive compensation (2124, 2125). Goddard further testified that he spoke to Furey concerning the beating of Brown shortly after the occurrence took place, and that Furey told him that he knew that Brown had been beaten (2073, 2090, 2091). Furey also told him that he had no right to hire Brown and that if he needed a man he should have gone to Weinheimer who "was to appoint the men for that job" (2074).

Carlton C. Hooks testified that in December, 1936, he spoke to Furey, Campbell, and others, concerning a union contract and the use of 807 men on his trucks. When he told them that he did not have sufficient work to justify

the steady employment of 807 men and that he would hire 807 men occasionally, they told him that he would not be annoyed (3601, 3603, 3605, 3606). JOSEPH BUGLIO testified that in the early part of 1938, Furey told him that under the union rules one man could not unload more than two trucks a day, and that if he desired to have a third truck unloaded, he would have to hire an additional man. Furey told him that if he did not care to abide by those rules, he would have to send his truck back to New Jersey (3873, 3874). He further testified that Furey told him that if there was any controversy in connection with the contract he had with 807, he was entitled to arbitration (3899). CONO BUGLIO testified that on one occasion he started to unload his truck himself, when Martin, his regular unloader, failed to appear. When Martin did appear, he told Buglio that he had no right to unload, and Buglio threw him out of the truck. Furey came on the scene some time later and told Buglio that he wanted Martin on the truck (3912, 3913). ALBERT A. WILSON testified that in the summer of 1937, Furey told him that it was unnecessary that he hire a union man. The witness, however, did not hire a City man to unload his truck (3992, 3993).

POINT VII

Answering the assertions of the Government.

The brief submitted by the Government asserts "the record demonstrates beyond dispute that the demands of Local 807 men were enforced by violence and threats of violence. The following examples are typical of what occurred on many other occasions" (Government's Brief, pp. 12, 13). This assertion is followed by specific acts of violence which the Government maintains were committed in pursuance of the alleged conspiracy.

We respectfully submit that the specific assaults enumerated in the Government's brief are not "typical of what

occurred on many other occasions" but constituted the *only acts of violence* to be found in the record, and these, with but one exception, are incapable of an interpretation that they were committed for the purpose of enabling the perpetrator to procure either money, employment or a contract. This single exception is fully discussed in Point I. The other acts of violence are not germane to the issue, as it clearly appears that they were not committed in furtherance of the alleged conspiracy. The first instance of violence cited by the Government is found at page 13 of the brief. This refers to the beating allegedly administered by Needelmann to an out-of-town driver to "emphasize his statement" that a City man would have to be hired. Close analysis of the testimony regarding this incident shows that it cannot be determined with reasonable certainty that the beating was related to any attempt to compel the out-of-town driver to hire an 807 man. The next incident cited by the Government is that involving the witness Finlaw (p. 13). There was no proof of any beating at all—but merely an alleged statement by an alleged 807 man that a beating had taken place. There was no proof that the perpetrator of the alleged act of violence was a member of 807 or was in any way connected with the alleged conspiracy. The third incident cited by the Government was that involving the witness Harbert (p. 13). The record does not substantiate the statement in the brief that an 807 man had "pulled" an "owner-driver" "off his truck and forced him to pay."

The Government's brief asserts: "Local 807 men, including the defendants, usually driving in groups of from three to a dozen, and often provided with automobiles, stationed themselves at the New York exit of the Holland Tunnel and at other points of entry into Manhattan." True, there were one or two instances where members of 807 used automobiles, but there is no foundation in the record for the statement that "from three to a dozen" men stationed themselves "at the tunnel and ferries and other points of entry to Manhattan".

The Government's brief states "in many instances groups of defendants would follow a truck to its destination and wait until it was practically or completely unloaded. They would then appear, usually driving up in automobiles, and tell the driver that if he knew what was good for him, he would not finish unloading or, if he had already finished, would not leave town with his truck, until the $9.42 was paid" (p. 12). This statement has no foundation in the record, for there was no testimony that any defendant deliberately waited until such time as a truck had been partially unloaded before making a request for employment. On the contrary, the record shows that the defendants requested employment as soon as they saw an out-of-town truck, and that they at no time made inquiry regarding the weight of the load or the length of time that might be consumed in unloading same. The record is replete with evidence which shows that the defendants were honestly seeking employment and glad to get it; and that when they got it, they almost always rendered honest and efficient service. Exceptions were rare even according to the Government's own witnesses, who testified with respect to the conduct of 24 men out of some 3,000 members of Local 807 engaged in over-the-road work.

The Government's brief states that some of the prosecution witnesses characterized the activities of the defendants as "racketeering", "robbery", etc. (pp. 20, 21). These statements were improperly admitted, as they were purely self-serving declarations, uttered *if* and when uttered—for the purpose of intimidating the members of the union; and certainly repeated for the purpose of prejudicing the jury. They are certainly no evidence even if actually uttered and honestly meant; to some employers all unions are "nothing but a racket".

The Government's brief asserts that the operators had no right to hire men of their own choice (pp. 21, 22). It will be noted in this connection that in each case the operators entered into collective bargaining agreements with

the union, by terms of which they agreed that the shop steward would select the men to be hired. This clause in the agreement was inserted for one purpose and one purpose only, and that was to prevent "under the hat" arrangements. But even if there were no special reason in the prevalence of "under the hat" arrangements as disclosed by the record, there was nothing improper in the clause since it embodies a well-known demand of bona-fide labor unions, frequently granted by employers, even though sometimes refused, and sometimes granted only after a struggle. The long struggle over the control of "hiring halls" in the maritime industry on the Pacific Coast is an important chapter of our labor history. But to Government counsel it is proof of "racketeering". And the Court, in effect, stated the same thing to the jury. No wonder the jury found the defendants guilty as charged.

CONCLUSION

The judgment of the Circuit Court reversing the judgment of conviction should be affirmed; and the indictment should be dismissed.

Respectfully submitted,

JAMES D. C. MURRAY,
Attorney for Respondents other than
Local 807 and Michael Cahill.

JAMES D. C. MURRAY
and
EDWARD C. MAGUIRE
on the Brief.